

# *DRAFT*

March 29, 2016

Mr. Jared Blumenfeld  
Regional Administrator  
EPA Region IX  
75 Hawthorne St.  
San Francisco, CA 94105-3901

Dear Mr. Blumenfeld:

This letter is in response to your correspondence of December 22, 2015 seeking the position of the State of Nevada on the listing of the Anaconda Copper Mine (Site) in Lyon County on the Superfund National Priority List (NPL). You will recall extending the deadline for my response to March 29 so that the State could continue to work with local stakeholders. That process was very productive, thanks in part to your recent visit to Lyon County.

The Environmental Protection Agency's (EPA) stated reason for proposing to list the Site now is to provide federal funding to address future management of residual draindown fluids from the former Arimetco operations at the Site. It is my understanding that the Atlantic Richfield Company (ARC) remains responsible for all other portions of the Site. However, there are certain conditions that must be agreed to by EPA before I can concur, albeit reluctantly, with your proposal to proceed with listing the Site on the NPL. These conditions are outlined in this letter below.

In discussions with local elected officials, community leaders, stakeholders and State agency leaders, I have consistently heard that everyone involved wants timely and responsible remedies at this Site. I have also heard a number of frustrations related to EPA's management of the Site and its proposal for listing the Site on the NPL.

First, there has long been frustration by community leaders and agricultural producers over perceived distortions by EPA in the media related to the relative risks posed by the Site. As you know, ARC is responsible for the vast majority of Site issues, including groundwater contamination and I have been assured that the public is not being exposed to Site contaminants. That fact needs to be more clearly articulated by EPA. Affected domestic well owners have been provided with alternate water supplies and the City of Yerington public water system, which has never been impacted by the Site, is being extended to serve these residents. According to the Draft Baseline Human Health Risk Assessment, the risk to the general public and agricultural receptors posed by the Arimetco heap leach pads is characterized as "likely to be insignificant" (emphasis added). The Arimetco fluid management system requires a long-term remedy, but it is

being actively managed to prevent any releases. Since EPA decided not to hold ARC responsible for the abandoned Arimetco heap leach pads, the issue is one of funding for long-term closure of the heaps and reclamation work. I have been assured by the Nevada Division of Environmental Protection (NDEP) that there is no imminent catastrophe looming on the horizon, nor any evidence of impacts by Site contaminants to areas agricultural products. EPA needs to make this point very clear in any future announcements regarding this Site.

Second, there is profound skepticism that federal funds will actually be made available even if the Site is listed on the NPL. Community leaders are generally aware that EPA's Superfund budget is dependent on the federal appropriations process and that funding for any specific site is a competitive process, with far more demands than available resources. In recent years, EPA has only funded a relatively few new Superfund construction starts. Community leaders would be much more likely to support NPL listing if there is assurance by EPA that the listing would actually result in federal funding being dedicated on a timely basis for the Arimetco reclamation work.

Third, there seems to be universal frustration with the pace of work at the Site and the lack of a meaningful schedule. I am told the real priorities at the Site relate to three of the seven "operable units" which are all the responsibility of ARC: groundwater; the evaporation ponds/sulfide tailings; and the Wabuska Drain. The most glaring example of EPA's failure to adequately prioritize and schedule work relates to its oversight at the former Anaconda evaporation ponds at the north end of the Site. As described to me, it appears that these former pond areas are a significant historical and potentially continuing source of contamination to groundwater. All parties involved with the Site agree that addressing these ponds is a top environmental priority in the context of the overall Site cleanup and yet EPA has not established any overall project schedule and has not required ARC to provide a specific project schedule. You cite in your December 22, 2015 letter concern for the groundwater resource, yet fail to address a known source of contamination with a viable responsible party in ARC to conduct the work and ample enforcement authority to compel the work.

I believe your recent visit to the Site brought these frustrations to the fore and I appreciate the conversations you have had with my staff about a path forward. I also recognize that the Arimetco fluid management system is a long-term issue at the Site that needs to be addressed with a permanent remedy. Despite our best efforts, the State and local stakeholders have been unable at this time to secure an agreement for a public-privately funded solution that meets the permanent remedy requirement. Therefore, the State will reluctantly concur with initiating the NPL listing process, provided the following conditions are agreed upon in writing in advance by EPA:

1. Communications strategy and joint State/EPA public messaging. There have been real impacts to agricultural producers due to exaggeration of the Site risks and misstatement of material facts. Coordination and agreement on public statements is essential to convey accurate information. Mason and Smith Valleys account for a substantial portion of the agricultural product sales in Nevada, registering over \$150 million annually. Incomplete or incorrect media information has resulted in rumors and negative effects on this

important industry. In collaboration with the State and local community, EPA needs to modify the Community Involvement Plan and develop a coherent communications strategy prior to the proposed listing to address these concerns and put Site risks in the proper context, as noted above. Consistent with past EPA statements, it is critical that the EPA website and all general correspondence and media communications provided by EPA include a statement that there is no evidence that contamination from the Site has affected any agricultural products in the area. In addition, press releases and public communications must be jointly issued by the local community and EPA.

2. Assurances and contingency plan if federal funds are not available for a permanent remedy. EPA must provide assurance that federal funding will be made available if the Site is listed on the NPL. If EPA is unsuccessful in securing sufficient federal funds to permanently close the Arimetco portion of the site, EPA must develop and implement a contingency plan of necessary interim actions to prevent a release of Arimetco draindown fluids to the environment.
3. EPA commitment to Site priorities and schedule. Community leaders do not want to see the Site languishing on the NPL for decades, as we have seen at the Carson River Mercury Site. In consultation with the NDEP, EPA must develop and commit to a prioritized five year schedule for Site work and adhere to that schedule to get critical path work done more quickly. This schedule should be developed by June 2016, posted on the EPA project website, and be updated on a quarterly basis and reviewed at public meetings. EPA must be willing to forgo process in favor of presumptive remedies with regard to standard mine reclamation work. EPA must also commit to holding ARC accountable for completing its work in a timely manner. Furthermore, assurances need to be provided that EPA, in consultation with the State and community, will take immediate steps to remove the Site from the NPL when cleanup goals have been met.
4. State-lead for the Arimetco portion (OU-8). NDEP has demonstrated recent success in serving in a lead role at the Rio Tinto site. I believe similar success is possible in managing the work related to the Arimetco heap closure and fluid management system remedies and request NDEP serve as the lead agency.
5. Flexibility on State Cost Share. Nevada is a very lean State government and has limited resources. If federal funds are used for a final remedy, the State may not be able to fund 10% of capital costs up front and may need to work out an appropriate funding arrangement with EPA. We also assume that any O&M costs the State may be liable for would occur after a final remedy is implemented and that the State would not be responsible for operating the fluid management system in the interim. Assurances in this regard are needed.
6. Preserve option for a State-lead public-private funding solution. Agreement on an alternative funding mechanism for the Site has not yet emerged from our ongoing discussions with private parties. However, deferral to this option, including deferral to a re-mining proposal, should remain available as a future possibility, regardless of the Site

listing status.

I believe these are reasonable conditions that respond to environmental and economic concerns responsibly and respect the concerns of community leaders and area residents. I look forward to your favorable response in order for the State to grant its final consent. If you have any questions regarding this letter, please contact Leo Drozdoff, Director, Department of Conservation and Natural Resources, at 775-684-2710.

Sincere regards,

BRIAN SANDOVAL  
Governor

cc: Joe Mortensen, Chairman, Lyon County Board of County Commissioners  
George Dini, Mayor, City of Yerington  
Jeffrey Page, County Manager, Lyon County  
Dan Newell, City Manager, City of Yerington  
Enrique Manzanilla, Director, US EPA Region 9 Superfund Division  
Leo Drozdoff, Director, Department of Conservation and Natural Resources  
David Emme, Administrator, Division of Environmental Protection  
John Ruhs, Nevada State Director, Bureau of Land Management  
Laurie Thom, Chairman, Yerington Paiute Tribe  
Bobby D. Sanchez, Chairman, Walker River Paiute Tribe  
U.S. Senator Harry Reid  
U.S. Senator Dean Heller  
Congressman Crescent Hardy  
Congressman Mark Amodei